

**REVISED**

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**Testimony  
before the Senate Committee on Indian Affairs  
United States Senate**

**Hearing on S. 1770  
AIndian Money Account Claim Satisfaction Act of 2003®**

**October 29, 2003  
Washington, D.C.**

Chairman Campbell, Co-Chairman Inouye and Committee members, my name is Fred Matt and I serve as the Chairman of the Confederated Salish & Kootenai Tribal Council. Thank you for the opportunity to provide this Committee with the views of the Confederated Salish and Kootenai Tribes.

The Salish and Kootenai Tribes have been very active in the area of trust funds management. Not only have we participated in the many inter-tribal discussions on how best to resolve the problems with federal management of these trust funds, we have also taken a more direct approach: under the authority of the Tribal Self-Governance Act, we manage our own financial trust services program including the IIM functions. I am happy to report to you that our Tribal government and Tribal members alike are very happy with our experience in taking over administration of this federal trust function. Due to our experience, we have a unique insight into the trust funds management issue since we can view it from the perspectives of both the accounts manager and account holders. As manager of these accounts, we can appreciate the complexities in resolving the administration and accounting issues. As an account holder, we know as well as anyone that federal mismanagement of the trust funds has long worked great injustices to the many Tribal and individual Indian beneficiaries - injustices that would not have been tolerated had they occurred in any other segment of American society. We appreciate that Congress is continuing to look at ways to correct these injustices and to prevent mismanagement in the future.

As you are aware, the filing of the *Cobell* litigation has resulted in the trust funds mismanagement issue receiving the attention that it has long deserved. Unfortunately, that litigation was filed over seven years ago and it was only last month that an initial decision was rendered at the federal district court level (and at that, there is obviously going to be much more litigation coming). In short, litigation is an extremely lengthy process and we agree with Senator Campbell's introductory remarks accompanying S. 1770, the litigation, the appeals and the subsequent claims for money, will take many, many more years. I believe it is both appropriate and productive for Congress to try its hand at a remedy for the situation.

We certainly oppose spending \$9 billion - or more - doing the historical accounting that Judge Lamberth ordered. To date, millions of dollars have been directed to accounting firms while the Indian people who may be owed money have received nothing. I am particularly concerned about our elders who may not last the additional years it will take for the accounting to take place and for the litigation and the appeals to run their course. If the Congress has that kind of money, it could go toward a compensation fund and/or be spent on tribal land consolidation that could help alleviate the problems associated with fractionated heirship of lands and the trust fund accounting nightmares that accompany income associated with property that may be owned by hundreds and even thousands of people. It could better yet go to properly fund Indian health care!

We have also been long opposed to the concept of a receiver being appointed to manage Indian trust funds as had been proposed by the plaintiffs and we are glad to see that no vestige of that idea is contained in S. 1770. . Our concern was that a receiver would ultimately demand control over trust resources that generate income into IIM accounts. As a Self Governance Tribe, we are the manager of trust resources on our reservation. Such a proposal would have been a step backward in this era of Tribal Self Determination and showed little regard for the rights and roles that many tribal governments are now playing relative to resource management on their homelands. In that same vein, we remain concerned about the potential interplay between new trust standards and the rights of tribes to manage resources. We will put up our system against anything the BIA proposes but we urge the Congress to keep an eye on how far the BIA or Judge Lamberth goes in coming up with and implementing standards. The beauty of Self Governance **B** the reason it works **B** is that it allows tribal governments to retain flexibility in meeting standards. It is critical that we retain the flexibility we now have to meet any new standards.

A few days ago, you introduced, S. 1770, the "Indian Money Account Claim Satisfaction Act of 2003". Our Tribal staff and Tribal Council are still in the process of reviewing this legislation. However, at this time we generally support the bill's approach of providing individual Indian account holders with alternative approaches toward addressing the problem.

The first option involves the establishment of an Indian Money Account Claim Satisfaction (IMACS) Task Force, which would be charged with analyzing the trust records and accounts, developing methodologies for an accounting, and subsequently determining the balances of individual accounts. If the account holder agrees with the determination, then the bill establishes a mechanism by which the Interior Secretary would then make a full payment in the amount determined, in exchange for a signed accord and satisfaction. Upon completion of this, the individual account holder would be dismissed from the *Cobell* class action litigation.

However, if the individual did not agree with the IMACS Task Force determination, a second option would allow the individual to submit the issue to an arbitration tribunal, which the bill would create. That arbitration would be binding on both the individual and the federal government and, like the first option, would also result in the individual being dismissed from the class action litigation.

The third option in S. 1770 is for the individual to remain part of the *Cobell* class action litigation. While I understand the need for this third option - basic good old American due process and the need for the plaintiffs to have their day in court - it does beg the question of whether we will be able to finally put this case behind us. A rationale for introducing this legislation is to put the case behind us and move forward but will that happen if a large number of individuals in the *Cobell* class decide to exercise the third option? We believe it is absolutely critical that the plaintiffs are able to access the Judgment Fund and we support the fact that you have drafted the legislation that way. We are

somewhat doubtful that the bill will be signed into law with such provisions intact if the United States still retains the liability inferred in Option 3. Stated another way, perhaps this legislation should settle the suit in finality.

A concern that I have and one which I am hearing from other tribes in Montana is how the authorization for appropriations in S. 1770 will be scored? Stated more directly, will it come out of the BIA's budget? The bill authorizes \$40 million to fund the two major parts of the bill (\$10 million in each of fiscal years 2004 B 2007). We would hope that there would be a manner, perhaps by working with the Budget Committee, in which these funds could be appropriated but not in such a fashion as to cut into already terribly underfunded programs at the BIA.

I should note that, like the *Cobell* litigation, S. 1770 does not directly address trust fund accounts where Tribes themselves are the account holders/beneficiaries. However, with respect to the individual Indian account holders, the bill appears to be a good faith effort by Congress to satisfy the accounts of many people, as quickly as is reasonably possible given the circumstances, while still preserving their ability to pursue other avenues in the event they disagree with the determination by the IMACS Task Force.

I would like to emphasize that I believe it is important to remember that Tribes themselves can be part of the solution to this problem. Tribal governments, like the Confederated Salish & Kootenai Tribes, who contract administration of trust fund accounts to continue our successful trust management programs can help to prevent future problems. Tribal governments are the closest to the trust beneficiaries, and we have the strongest motivation to properly handle these monies for our constituents. That is why we have pressed for inclusion of a Trust Reform Demonstration Project (section 134) in the FY 2004 Interior appropriations bill (S. 1391). This demonstration project would ensure our ability to continue this effective management without being impaired by any reorganization of trust functions within the Interior Department. On behalf of our Tribal Council, I want to convey our appreciation for the support of this project by our friends in the Senate.

Over the last decade, a great deal of energy and resources has gone into the trust funds management issue. This is true of all three branches of the federal government, as well as scores of Tribal governments. I welcome Congressional efforts to bring proper relief to individual Indian account holders. As Judge Lamberth observed in his decision on the *Cobell* case, Congress was an original catalyst on this issue via the 1992 House Report titled "Misplaced Trust: The Bureau of Indian Affairs' Mismanagement of the Indian Trust Fund".

S. 1770, and the recent House Resources Committee oversight hearing, demonstrate that Congress is not content to sit on its hands while the issue is examined by its sister branches of government. I believe this engagement by Congress, in conjunction with active participation from Tribal

governments and individual account holders, can be productive in reaching a solution to a long-standing problem. S. 1770 is an important step in that direction.

Mr. Chairman, thank you for the opportunity to provide my views to this Committee.